

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO VILLATORO,
MISAEAL ALEXANDER MARTINEZ CASTRO, ANGEL
MARTINEZ, EDWIN ULLOA MOREIRA and MATEO
UMAÑA individually and on behalf of all others similarly
situated,

**Case No. 21-cv-09014
(PAE)(SDA)**

Plaintiffs,

- against -

KELCO CONSTRUCTION, INC., KELCO
LANDSCAPING, INC., E.L.M. GENERAL
CONSTRUCTION CORP. D/B/A KELLY’S CREW, JOHN
KELLY and JOSEPH PROVENZANO,

Defendants.

DECLARATION OF EDWIN ULLOA MOREIRA

I, Edwin Ulloa Moreira, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I was employed by the E.L.M. General Construction Corp. d/b/a Kelly’s Crew (“ELM”) from about April 2016 until approximately December 2019.
2. I worked as a laborer and form setter. My duties included driving, landscaping, cutting grass, planting, moving stones and metals and, construction. We would build rooftop parks. At times I also drove other employees in company vehicles to jobsites.
3. Kelco Construction, Inc. (“Kelco”) and ELM share offices located at 25 Newton Place, Hauppauge, New York (“the Hauppauge facility”).
4. The Hauppauge facility consists of offices, a prefabricated steel warehouse and storage facility, a yard (for storing mulch, topsoil, and other landscaping and construction

materials), shipping containers for storing tools and equipment, large waste containers, and a parking lot.

5. ELM performed much of its work in New York City. When I worked, Kelco Drivers and ELM employees (at least 30 in total) reported to the Hauppauge facility before 4:30 AM each morning. On rare occasions we would be expected to report at 4:00 AM or 5:00 AM.

6. Upon arriving at the Hauppauge facility ELM employees would load materials and tools needed to complete the work for that day, onto the company vehicles. An employee for each vehicle would then do an inventory of materials and tools to make sure everything was loaded. We would then all travel in the company vehicles to the jobsites in New York City. At the end of the day, we would all travel from the jobsite to the Hauppauge facility. When we arrived at the Hauppauge facility, we would unload any unused materials and tools from the truck. We would also unload waste and garbage which we had collected during the day and dump them into the waste containers located at the Hauppauge facility. We would make sure the trucks were cleaned and organized at the end of each day. At the end of the week, on Fridays, upon arriving at the Hauppauge facility, we would clean the inside and outside of the vehicles using soap, water, brushes, hoses, and vacuums which were provided by ELM specifically for that purpose.

7. Other ELM employees and I were not paid from the time we arrived at the Hauppauge facility until the vehicles were unloaded and cleaned at the end of the day. Instead, we were paid for the time we arrived at the jobsite. We were only paid from the time we were scheduled to start working at the jobsite (6AM or 7AM) until the time we left the jobsite, to return to the Hauppauge facility (which was usually 8 hours). The company paid drive time pay

of 3 hours at a rate of only \$15-\$20 per hour. The drive time rate was less than the regular rate paid, and did not depend on the actual number of hours spent driving.

8. Alberto and Alex were some of my coworkers who also drove vehicles. We would ask each other why we only we weren't paid time and a half for time spent driving company vehicles. The manager Barret was one of the people we spoke to about paying us more for driving time. Danny was another driver who together we would complain and wondered why we were getting paid that way.

9. The reason why I believe all of my co-workers were only paid for the scheduled time is that we all spoke and knew we were getting paid the same way. Sometimes we would ask Barret, but he would brush off the question. Once he said that the ELM doesn't pay for travel time because it pays a higher hourly rate than other companies for work at the jobsite. He then compared us to another company. He said, "Steven Dubner" was another landscaping company that paid employees for travel time, but Steven Dubner paid its workers \$10 per hour less than ELM paid, so we were actually better off.

10. One time, when some of the coworkers and I were talking and complaining about the situation, a foreman told me that this is the way that we got paid and that's it, but I can't remember his name

11. My primary language is Spanish. On December 21, 2022, this declaration was verbally translated to me into Spanish by Shirley Navarro-Losito.

12. I ask that the Court please authorize notice to my co-workers of the right to join this case.

I declare under penalty of perjury, that the foregoing is true and correct.

Dated: 12/21/2022


ID 4d9irjAZwQhiY3hHJMdjNJYf

Edwin Ulloa Moreira

eSignature Details

Signer ID:	4d9irjAZwQhiY3hHJMdjNJYf
Signed by:	Edwin Ulloa Moreira
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IP Address:	71.190.146.42
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